

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1863 of 1994

with

CRIMINAL MISC.APPLICATION No 1874 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1.NIRMALABEN MEGHJIBHAI & 4 ORTHERS

Versus

STATE OF GUJARAT & 1 ANOTHER

Appearance:

1. Criminal Misc.Application No. 1863 of 1994
Mr I M Pandya for Mr A S Kothari for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Misc.ApplicationNo 1874 of 1994
MR I M Pandya, for Mr AS KOTHARI for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/02/97

ORAL JUDGEMENT

Heard Mr I M Pandya, learned Advocate for the petitioners. None appears for the non-applicant No.2 Vinodbhai J Chaudhari.

This Criminal Misc. Application has been filed by the original accused No. 1 to 5 for quashing of the process issued by the learned Judicial Magistrate First Class, Junagadh dated 25.5.1993. It is alleged that on 22.5.1993, the accused No.1 who is the wife of the complainant along with his mother, accused No.2 and brothers, accused No.3 to 5 visited Junagadh. They all had gone to attend the court proceedings in a complaint filed by Nirmalaben against her husband under section 498-A of the IPC. The case of the complainant is that they abused, threatened and assaulted him.

2. Normally, it is not for this court to enter into the merit of this case at this stage, if prima facie there is case against the accused persons. However, there are certain inherent improbabilities which call for interference by this court. It appears to be improbable that the entire family, i.e. the mother-in-law and all the brothers-in-law would have visited Junagadh to attend the hearing on 22.5.1993. It is stated by accused No.3 that he is an employee of ONGC and it is also pointed out that he was on duty in the morning shift from 7.00 to 14.00 hrs. A certificate in that regard has been produced. Similarly, accused No.4 is an employee of S.T. office, Rajkot. It is stated that he was on duty on 22.5.1993 from 8 am to 4.30 a.m. Accused No.5 is in bank service and a certificate in this regard has been produced to show that he was also on duty on that day. I am quite conscious of the fact that the Court is not to consider the plea of alibi at this stage. However, taking all the circumstances in totality that all the three brothers who are in different Government organisations at different places would have visited Junagadh along with the mother and the sister appears to be highly improbable. In this view of the matter, there is substance in the saying of the petitioner that this complaint has been filed as a counter blast of the complaint filed against the complainant-husband under section 498-A. Thus, I am of the view that continuing of the proceedings is nothing but abuse of process of law.

3. In view of the aforesaid discussion, this criminal Misc.Application is allowed. The order passed by the learned Judicial Magistrate First Class, Junagadh

dated 25.5.93 in Criminal Case No.3192/93 is quashed and set aside.

Rule made absolute accordingly.

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